

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ELODIE PASSELAIGUE, on behalf of
herself and all others similarly situated,

Plaintiff,

v.

GETTY IMAGES (US), INC., GETTY
IMAGES, INC., BILL DIODATO
PHOTOGRAPHY, LLC, and BILL
DIODATO,

Defendants.

Case No. 16 Civ. 01362 (VSB) (BCM)

DECLARATION OF NANCY E. WOLFF

NANCY E. WOLFF declares as follows:

1. I am a partner with the law firm of Cowan, DeBaets, Abrahams & Sheppard LLP (“CDAS”), counsel for defendants Getty Images (US), Inc., Bill Diodato Photography, LLC, and Bill Diodato (collectively, the “Defendants”). I submit this declaration in support of Defendants’ Motion for Sanctions Pursuant to Fed. R. Civ. P. 11 against plaintiff Elodie Passelaigue (“Passelaigue”) and her attorneys, including her current attorneys of The Law Office of Jack Fitzgerald, PC, namely, Jack Fitzgerald, Esq., Melanie Persinger, Esq., and Trevor M. Flynn, Esq. of, and their former colleague, Thomas A. Canova, Esq.

2. On March 16, 2016, I spoke by phone with Passelaigue’s attorneys, in particular, Mr. Fitzgerald and Mr. Canova, regarding the claims alleged in their client’s Complaint dated February 22, 2016 (Dkt. No. 1). My colleague, Scott J. Sholder, Esq. of CDAS, was in the room with me and participated in the call. I advised Passelaigue’s attorneys that I had taken the alleged claims seriously and done my due diligence, which entailed, among other things, interviewing Mr.

Diodato and three other witnesses to the signing of the Model Release¹ at issue (one of whom actually signed the Model Release as a witness).

3. During the call with Passelaigue's attorneys, I went through the Complaint in detail and pointed out the areas that were factually inaccurate. For example, I advised Passelaigue's attorneys that, contrary to the allegations in the Complaint, Mr. Diodato did not sign any model release or go into a room with Passelaigue at the 2004 Clinique Shoot; that the executed Model Release is a pre-printed Corbis form release with a 2007 date; and that I spoke with three witnesses who very specifically recalled Passelaigue signing the Model Release and knew that it covered images taken at both the 2004 Clinique Shoot and the 2009 Spiegel Shoot. I provided the names of the three witnesses to Passelaigue's attorneys and informed them that they were all willing to sign sworn statements. Passelaigue's attorneys stated that they would discuss with their client the discrepancies that I raised on the call.

4. On April 1, 2016, CDAS sent a letter to Passelaigue's attorneys by email, reiterating the factual discrepancies that I raised on the call and requesting withdrawal of the Complaint in accordance with Rule 11 of the Federal Rules of Civil Procedure. A true and correct copy of such letter is attached hereto as **Exhibit A**.

5. On the same date, April 1, 2016, CDAS provided Passelaigue's attorneys with unredacted copies of the Model Release and the signed written statements of all three witnesses, namely, Max Miller, Linda Hilfiker, and Lauren Benward. True and correct copies of their statements are attached hereto as **Exhibits B-D** respectively.

¹ Unless otherwise noted, all defined terms referenced herein, including the term "Model Release," shall have the same meanings assigned in Defendants' Memorandum of Law in support of their Motion for Sanctions Pursuant to Fed. R. Civ. P. 11.

6. Attached hereto as **Exhibit E** is a true and correct copy of email correspondence by and between Passelaigue and Daureen Castonguay of Wilhelmina International, Inc. dated August 8, 2014.

7. Attached hereto as **Exhibit F** are true and correct copies of excerpts from the transcript of the Deposition of Elodie Passelaigue dated August 13, 2018.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated: New York, New York
September 6, 2018



NANCY E. WOLFF

EXHIBIT A



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 (1943-2001)
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 (1945-1996)

■ ADMITTED IN CA
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April 1, 2016

VIA FEDEX AND E-MAIL

Thomas A. Canova
 Jack Fitzgerald
 THE LAW OFFICE OF JACK FITZGERALD, PC
 Hillcrest Professional Building
 3636 Fourth Avenue, Suite 202
 San Diego, California 92103
 tom@jackfitzgeraldlaw.com
 jack@jackfitzgeraldlaw.com

Re: *Passelaigue v. Getty Images (US), Inc., et al.*, No. 16-cv-01362-VSB

Dear Mr. Canova and Mr. Fitzgerald:

We represent Getty Images (US), Inc., Getty Images, Inc., Bill Diodato Photography, LLC, and Bill Diodato (collectively “Defendants”) in the above-captioned matter. As you are aware, under Federal Rule of Civil Procedure 11(b), any paper submitted to the Court by an attorney certifies that he has made an “inquiry reasonable under the circumstances” that “the claims, defenses, and other legal contentions are warranted by existing law” and that “the factual contentions have evidentiary support or . . . will likely have evidentiary support” after reasonable investigation.

After reviewing Elodie Passelaigue’s (“Plaintiff”) Class Action Complaint dated February 22, 2016 (“Complaint”), conferring with our clients, interviewing witnesses and obtaining sworn statements from those witnesses, and reviewing relevant documentation (including the original model release in this case) and applicable case law, it is clear to us that, in violation of Federal Rule of Civil Procedure 11(b)(3), there is no factual support for most of the statements set forth in your pleading, and no legal support for most of your claims. These are not instances where reasonable minds could differ; your statements have no evidentiary support because the facts are demonstrably false, and your claims have no legal basis because the law clearly forecloses your arguments. Please take notice that we will serve a motion for sanctions pursuant to Rule 11 if you do not withdraw the following false statements and frivolous legal claims from your Complaint¹:

I. Demonstrably False Factual Claims

A. Signing of the Model Release (Cplt. ¶¶ 23, 27-29, 35, 37, 38, 62-65, 67, 69, 71, 87, 89, 147, 155): As we explained to you during our phone call on March 16, 2016, and as evidenced by the sworn declarations of three witnesses and the scans of the original model release we have sent you in conjunction with this letter, the allegations

¹ Our reference to specific paragraphs of the Complaint is not meant to be exclusive of other paragraphs that may be similarly meritless or false. To the extent other paragraphs fall within the scope of our Rule 11 allegations but are not specifically mentioned here, we demand that you also withdraw those paragraphs, and we hereby reserve our right to so demand at any time hereafter.



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contained in the above-referenced paragraphs are patently false. Mr. Diodato quite simply never showed Plaintiff a model release in 2004 after the Clinique underwater test shoot. Two witnesses have sworn under penalty of perjury that they saw, firsthand, that the model release at issue here was signed by your client in 2009 after the Spiegel shoot, and was drafted specifically to also include the photographs taken during the Clinique underwater test shoot.² The model release itself – as attested to in the sworn declaration of Max Miller – is a Corbis form release with a pre-printed date at the bottom showing that the form was revised in 2007.³ Accordingly, it is impossible for Plaintiff to have signed the release in 2004, as the form did not exist at that time. Your contention that the model release is “doctored” is preposterous and baseless; you admit in the Complaint that the model release is dated June 17, 2007 and you cannot plausibly argue that Mr. Diodato somehow added that date post-hoc in a conscious attempt to mislead your client which, of course, he did not. Your desperate attempt to besmirch Mr. Diodato’s name by accusing him in publicly filed court papers of tampering with legal documents without a scintilla of evidence is completely improper and borders on defamatory.

- B. Mr. Diodato’s Rights in the Photographs (Cplt. ¶¶ 25, 33, 72, 74):** As you can plainly see in the terms of the invoice between Mr. Diodato and Spiegel, which we provided to you, Bill Diodato Photography, LLC did, in fact, retain all ownership rights in the photographs of Plaintiff. His photographs were not made “for hire” or otherwise assigned to the companies commissioning the shoot. Accordingly, all of your accusations concerning Mr. Diodato’s and his company’s lack of ownership in the photographs at issue – and therefore their purported inability to license those photographs to Getty Images – are false.
- C. Photographer Pseudonyms (Cplt. ¶¶ 57, 59, 72, 89, 90):** As we also explained to you over the phone, it is common practice in the photography industry for photographers to use pseudonyms when submitting photographs for stock use, and there is nothing false about Getty Images’ use of Mr. Diodato’s pseudonym on its website in connection with the offering for license of photographs submitted by Mr. Diodato under that pseudonym. (See, e.g., <http://www.alamy.com/contributor/how-to-sell-images/captions-and-keywords-for-images/>; http://www.shutterstock.com/contributorsupport/articles/kbat02/000006637?q=pseudonym&l=en_US&fs=Search&pn=1). In fact, the United States Copyright Office has even released official guidelines on the use of pseudonyms in copyright registrations. (See <http://www.copyright.gov/fls/fl101.pdf>.) Simple internet research on this topic would have readily shown that your allegations are baseless.

II. Frivolous Legal Claims

- A. Fraud (Cplt. ¶¶ 32-33, 59, 69, 71, 72, 145-152):** As you intimated during our phone call, your client’s supposed lack of awareness of the “unconscionable” terms contained in the model release resulted from her failure to read the model release, and the allegations in the Complaint all but concede this point. For instance, that Mr. Diodato supposedly did not “disclos[e] the actual unconscionable terms” of the one-page release inherently means that your client was otherwise unaware of the terms; she would have been aware of them had she read the simple release. (Cplt. ¶ 145.) Also, that Mr. Diodato allegedly “direct[ed] [Plaintiff’s] attention only to the signature line and other non-substantive portions” of the release carries the same implication. (*Id.* ¶ 147).

² See Declaration of Linda Hilfiker at ¶¶ 5 & 6; Declaration of Max Miller at ¶¶ 6 & 7.

³ See Declaration of Max Miller at ¶ 9.

Your client could have easily directed her own attention to the substantive terms of the release which, we cannot stress enough, was one page long and in plain English. (Your client does not claim to be unable to read or understand the English language). Similarly, your client would have known Mr. Diodato's purported statements were false (and we do not concede that they were) had she simply read the release. (*Id.* ¶ 149).⁴ New York law is clear that allegations that the signatory to a contract "did not read the provision, or that it was not brought specifically to her attention are of no avail, since, as a signatory to the contract, she is presumed to know the contents of the instrument she signed and to have assented to such terms." *British W. Indies Guar. Trust Co. v. Banque Internationale a Luxembourg*, 567 N.Y.S.2d 731, 732 (App. Div. 1st Dept. 1991). *See also Jackson v. Broad. Music, Inc.*, No. 04 CV 5948 (TPG), 2006 WL 250524, at *9 (S.D.N.Y. Feb. 1, 2006) (dismissing fraudulent inducement claim because the one-page agreement at issue was clear that Plaintiff was releasing his rights to his music, so "Plaintiff could not reasonably have relied on any alleged misrepresentation to the contrary").

Accordingly, as a matter of law, your client was not "conned" or "induced" by Mr. Diodato or anyone else into signing the model release. The case law is clear that a "plaintiff may not avoid [her] obligations under a clearly worded release on the grounds that the defendant falsely misrepresented the true significance of the document to [her] in order to secure [her] signature." *Weil v. Johnson*, No. 119431/02, 2002 WL 31972157, at *2 (N.Y. Sup. Ct. Sept. 27, 2002). Put another way, a fraud claim fails on reasonable reliance grounds when the plaintiff purports to have relied on an oral promise that is "flatly contradicted by [the] express terms" of a written agreement. *See, e.g., Village on Canon v. Bankers Trust Co.*, 920 F. Supp. 520, 530-31 (S.D.N.Y. 1996); *Urstadt Biddle Props., Inc. v. Excelsior Realty Corp.*, 885 N.Y.S.2d 510, 512 (App. Div. 2d Dept. 2009) (a "conflict between an express provision in a written contract and a prior alleged oral representation . . . negates a claim of reasonable reliance upon the oral representation" for purposes of fraud). Plaintiff's fraud claim falls squarely within this body of case law such that it should have been immediately obvious that the claim was not warranted by existing law.

- B. Right of Publicity (New York & Washington) (Cplt. ¶¶ 51, 114, 115, 155):** The presence of a signed model release evidences Plaintiff's consent to the uses set forth in that agreement, and you are unable to avoid your client's agreement to the terms of the model release for the reasons stated above. Accordingly, because Defendants' use of Plaintiff's likeness was not without her permission, your right of publicity claims fail as a matter of law under both New York and Washington law.⁵
- C. New York Gen. Bus. L. § 349 (Cplt. ¶¶ 121-127):** This claim fails as a matter of law, and basic legal research into the requirements to state a claim under the statute would have revealed the futility of pleading it in the first place. To state a claim under N.Y. GBL § 349, the "gravamen of the complaint must be consumer injury or harm to the public interest." *Conopco Inc. v. Wells Enters., Inc.*, No. 14 CIV. 2223 NRB, 2015 WL 2330115, at *6 (S.D.N.Y. May 14, 2015). Confusion regarding issues like ownership of intellectual property is insufficient to state a claim under § 349. *Id.* For instance, trademark infringement actions alleging only general consumer confusion do not threaten the requisite direct harm to consumers for purposes of stating a claim

⁴ Your reference during our phone conversation to the commonly known phenomenon of "click-wrap" licenses (such as iTunes terms and conditions) that "nobody" reads only serves to bolster our position.

⁵ Defendants do not concede that Washington law even applies here.

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under § 349 unless there is specific and substantial injury to the public interest over and above the damages caused by ordinary trademark infringement. *See Sola Franchise Corp. v. Solo Salon Studios Inc.*, No. 14-CV-0946, 2015 WL 1299259, at *14 (E.D.N.Y. Mar. 23, 2015). *See also Perfect Pearl Co., Inc. v. Majestic Pearl & Stone, Inc.*, 887 F. Supp. 2d 519 (S.D.N.Y. 2012).

Your allegations that Defendants “misrepresent[ed] to consumers and the public at large” that they could license Plaintiff’s image and falsely stated that “plaintiffs and class members use or otherwise endorse or sponsor or are otherwise affiliated with Getty’s purported licensees and/or their products and services” are precisely the types of claims *not* covered by § 349 – that is, they do not present injuries distinct from the harm that intellectual property and false advertising laws generally seek to redress. *Nomination di Antonio e Paolo Gensini S.N.C. v. H.E.R. Accessories Ltd.*, No. 07 Civ. 6959, 2009 WL 4857605, at *8 (S.D.N.Y. Dec. 14, 2009). Moreover, cases involving allegations of false advertising fall under § 349 only when there is a risk to public health or safety, such as where the FTC would intervene, which is clearly not the case here. *See Sports Traveler, Inc. v. Advance Magazine Publishers, Inc.*, 96 Civ. 5150, 1997 WL 137443 (S.D.N.Y. Mar. 24, 1997).

D. Class Action (Cplt. ¶¶ 47, 92, 99-112, 146, 147, 149): It is abundantly clear that there can be no class here. It is evident from the face of your Complaint that the nature of the claims at issue are highly fact-specific and, pursuant to applicable case law, completely antithetical to class treatment.

1. Rule 23(a): Commonality and Typicality:⁶ The following excerpts from your Complaint show that individual issues in this case will predominate common issues, and that your client’s situation will not be deemed typical of other putative class members’:
 - i. “[D]epending on the circumstances, such use might violate contracts she had with her actual clients, or otherwise compromise and damage those relationships and her career.” (Cplt. ¶ 47): Obviously Plaintiff’s entitlement to damages (if any) will be specifically keyed to her career, her contracts, her clients, her relationships, and her reputation. These factors are unique and will not be the same for any other putative class member, and will inherently mean that Plaintiff’s claims are not typical of the rest of the class. *See Wal-Mart Stores, Inc. v. Dukes*, 564 U.S.338 (2011) (In order to satisfy commonality, a plaintiff’s claims “must depend on a common contention . . . of such a nature that is capable of classwide resolution – which means that determination of its truth or falsity will resolve an issue that is central to the validity of each of the claims in one stroke.”). *See, e.g., Salon Fad v. L’Oreal USA, Inc.*, No. 10 CIV 5063 DLC, 2011 WL 4089902, at *11 (S.D.N.Y. Sept. 14, 2011) (denying class certification because plaintiffs “failed to demonstrate that the alleged injury to the salons’ reputations is susceptible of class-wide proof”).
 - ii. “Professional fees,” “usage fees,” “licensing fees,” “a discount on the professional fees class members would otherwise demand,” “the market value for their services,” class members’ “reputations” and “prospective business relationships and

⁶ Defendants do not concede that you will satisfy the numerosity and adequacy requirements of Rule 23(a). Rather, Defendants believe you also will fail those prerequisites to class certification but need not address them here.

opportunities” (Cplt. ¶¶ 100-103): These items are all fact-dependent and will vary by individual plaintiff, and are not suitable to the class form.

- iii. “Diodato made material false representations to plaintiff and class members, all the the same overall message, variously including” statements regarding how he would use the photographs, and “Diodato also made material false representations” by failing to disclose various portions of the releases” (Cplt. ¶¶146-147): A fraud claim founded upon oral misrepresentations is not an appropriate matter for class certification where, as here, the representations are not uniform in all material respects. *See Moore v. PaineWebber*, 306 F.3d 1247, 1252 (2d Cir. 2002) (affirming denial of class certification; where “fraud actions [are] based on individualized misrepresentations,” class certification is improper because plaintiffs will need to submit proof of the statements made to each plaintiff, the nature of the varying material misrepresentations, and the reliance of each plaintiff upon those msrepresentations in order to sustain their claims”). *See also* Fed. R. Civ. P. 23(b)(3) advisory committee’s note (1966 amendment) (“[A]though having some common core, a fraud case may be unsuited for treatment as a class action if there was a material variation in the representations made or in the kinds or degrees of reliance by the persons to whom they were addressed.”). There is no plausible way that Mr. Diodato’s conversations with other models, if any, were identical to his purported conversation with Plaintiff, or that his representations concerning various uses of various types of photographs, and the models’ understandings of those representations, were identical.

2. Rule 23(b)(3): Common questions of law and fact will not predominate: In addition to the above, the following are primary examples of the individualized nature of the claims at issue here that will doom any putative class you may seek to certify:

- i. Mr. Diodato’s manner of conveyance of rights to his photographs and whether Mr. Diodato had rights in particular photographs will vary based on the photograph and the job. (Cplt. ¶ 107(a), (b).)
- ii. Getty Images’ awareness of Mr. Diodato’s rights will vary based on the photograph submitted. (Cplt. ¶ 107(c), (d).)
- iii. As dicussed herein, whether a particular plaintiff will satisfy the elements of each of your client’s causes of action will inherently vary by plaintiff and a plaintiff’s specific circumstances in dealing with the Defendants. The exact circumstances of any of the Defendants’ purported conduct will not be the same in each putative class member’s case. For instance, the circumstances surrounding the signing of each model release will be unique, including the words spoken and understood between the parties; the model release at issue in each scenario may be different, whether in form (depending on what pre-printed form was used and in what year), substance (model release terms sometimes are amended), timing of signature (whether at or after the shoot), presence of witnesses (and how many), and awareness by a model of the terms of the release; and the experience, sophistication, and “cache” of each model will vary. (Cplt. ¶ 107(e)-(i).)
- iv. The propriety of injunctive relief, compensatory damages, restitution, punitive damages, and fees and expenses will also depend on the plaintiff and the situation. As we explain herein, each model’s fees charged and royalties earned will

specifically depend on that particular model's career path, success, niche specialty areas, appearance, personality, and standing in the modeling industry as well as innumerable other factors that cannot apply across class members. (Cplt. ¶ 107(j)-(n).) The reputations garnered by certain models and the degree of purported damage thereto are particularly ill-suited to the class action mechanism, and there is plenty of case law to this effect. *See, e.g., Salon Fad*, 2011 WL 4089902, at *11.

3. **Rule 23(b)(2): No Injunctive Class:** As an initial matter, your client does not have standing to represent an injunctive class because she does not allege future imminent harm. *See Schroedel v. N.Y. Univ. Med. Ctr.*, 885 F. Supp. 594, 598 (S.D.N.Y. 1995) (to establish standing for injunctive relief, a plaintiff must show "a real or immediate threat that the plaintiff will be wronged again"). Nonetheless, certification under Rule 23(b)(2) is inappropriate because the allegations in the Complaint regarding the class members' purported injuries relate predominately to money damages. (*See generally*, Cplt. ¶¶ 99-103.) *See Benfield v. Mocatta Metals Corp.*, No. 91 CIV. 8255 (LJF), 1993 WL 148978, at *5 (S.D.N.Y. May 5, 1993) (certification under Rule 23(b)(2) is not appropriate where plaintiff's request for injunctive or declaratory relief is ancillary to a claim for monetary damages). Moreover, as discussed above, individualized factfinding would be required to determine the putative class members' injuries, making it impossible to fashion a single injunction that would provide relief to each class member. *See Robinson v. Metro-North Commuter R.R.*, 267 F.3d 147, 162 (2d Cir. 2001) (The Rule 23(b)(2) type of class action is "intended for cases where broad, class-wide injunctive or declaratory relief is necessary to redress a group-wide injury."); *Ault v. J.M. Smucker Co.*, No. 13-CV-3409, 310 F.R.D. 59, 68, 2015 WL 4692454, at *8 (S.D.N.Y. Aug. 6, 2015) (A "Rule 23(b)(2) class is appropriate only when a single injunction or declaratory judgment would provide relief to each member of the class."). Based on clear precedent, you cannot plausibly establish a Rule 23(b)(2) class, and your strained attempt to do so warrants Rule 11 sanctions.

- E. **Inclusion of Getty Images, Inc. as a Defendant: (Cplt. ¶¶ 6, 76):** As we explained to you on the phone, Getty Images, Inc. is not a proper defendant in this case, and has been released from other cases where it was improperly named. *See, e.g., Princeton Digital Image Corp. v. Facebook, Inc.*, No. 2:11-CV-400-JRG, 2012 WL 3647182 (E.D. Tex. Aug. 23, 2012) (granting Getty Images, Inc.'s motion to dismiss for lack of personal jurisdiction where "it was wrongly named in the complaint because [plaintiff] confused it with its operating subsidiary, Getty Images (U.S.), Inc."); *Car-Fresnher Corp. v. Getty Images, Inc.*, 822 F. Supp. 2d 167, 172 (N.D.N.Y. 2011) (Getty Images (U.S.), Inc. substituted for Getty Images, Inc. because Getty Images, Inc. had no involvement in the matters at issue).

The above statements of purported fact and legal claims in your Complaint violate Rule 11 because they are "utterly lacking in [evidentiary] support," *Kingvision Pay-Per-View Ltd. v. Ramirez*, 2005 WL 1785113, at *3 (S.D.N.Y. July 28, 2005), and "after reasonable inquiry, a competent attorney could not form a reasonable belief that the pleading is well grounded" in fact or in law. *Id.* at *2. *See also Margo v. Weiss*, 213 F.3d 55 (2d Cir. 2000) (standard for whether a claim is frivolous or unwarranted is "objective unreasonableness"). It is evident that these objectively unreasonable statements and claims were made in the absence of due diligence, or worse, are being asserted as a bad faith tactic to harass or disparage



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Defendants. This conduct constitutes the type of abusive behavior Rule 11 was designed to prevent. *See* Fed. R. Civ. P. 11(b).

As a professional courtesy, we are providing you with an opportunity to resolve these issues informally and without the need to involve the Court in the Rule 11 process. Please confirm that you will withdraw the above-mentioned false factual allegations and legal claims within the next **7 calendar days**. If you insist on adhering to these demonstrably false claims, we will have no choice but to formally serve a Rule 11 motion and start the clock to seek sanctions, which are available against both you and your client. *See* Fed. R. Civ. P. 11(c)(1). *See, e.g., T.B.I. Indus. Corp. v. Emery Worldwide*, 900 F. Supp. 687, 696 (S.D.N.Y. 1995) (granting Rule 11 sanctions where defendant refused to voluntarily dismiss despite receiving documentation showing its third-party claim lacked merit).

We look forward to your prompt cooperation. Please do not hesitate to contact us if you would like to discuss this matter further. The Defendants reserve all of their rights, remedies, claims, and defenses, whether legal or equitable.

Sincerely,

Scott J. Sholder /MBL

Scott J. Sholder

cc: Nancy E. Wolff, Esq.
Marissa B. Lewis, Esq.

EXHIBIT B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ELODIE PASSELAIGUE, on behalf of herself
and all others similarly situated,

Plaintiff,

v.

GETTY IMAGES (US), INC., GETTY
IMAGES, INC., BILL DIODATO
PHOTOGRAPHY, LLC,
and BILL DIODATO,

Defendants.

Civil Action No. 16-cv-01362 (VSB)
(BCM)

DECLARATION OF
MAX MILLER

MAX MILLER, being duly sworn, deposes and says:

1. I submit this declaration in connection with the above-captioned action. I have personal knowledge of the following facts and, if called as a witness, I could competently testify thereto.

2. I am a digital photography technician and have worked with Bill Diodato at photo shoots many times over the last seven years. As a digital technician, my responsibilities include lighting, running the computer, and ingestion of the model releases.

3. I was present at the Spiegel catalog shoot on June 11, 2009. I specifically remember this shoot – including the model, Elodie Passelaigue, and the signing of the model release (the “Model Release”), because it was one of the first times that I worked with Mr. Diodato.

4. I typically handled the model releases at photo shoots. I recall, however, that Mr. Diodato handled the Model Release in this instance because he had a prior working relationship with Ms. Passelaigue and also wanted to ask her about another photo shoot they had done

together in 2004 for Clinique. It seemed that this Model Release was more detailed or complicated than others, so Mr. Diodato wanted to make sure that it was done properly.

5. If asked the purpose of the model release, Mr. Diodato or I would tell a model that the release allowed Mr. Diodato to use the photographs for whatever he would like.

6. I was present when the Model Release was signed. I recall sitting at a table in the studio with several other people, but I did not sign my name as a witness. I saw Mr. Diodato fill out his part of the Model Release (name of photographer, date and description of shoot) before handing it to Ms. Passelaigue, who then signed her name, and then the witnesses, who also signed. I recall Mr. Diodato asking Ms. Passelaigue about the Clinique shoot around that time.

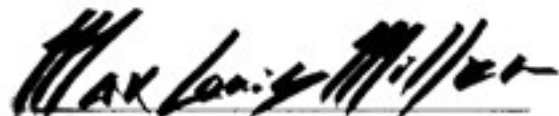
7. I further remember Ms. Passelaigue taking her time reading the Model Release because I was clearing food from the lunch table and she was still reviewing it. Mr. Diodato nor I would ever hover over a model while they were reviewing a release.

8. Generally, after Mr. Diodato has a release signed, I am responsible for scanning the release onto the computer. I usually then apply a copy of a photograph taken at each photo shoot covered by the release to the release digitally. In this instance, the Model Release covered two photo shoots, so I applied two photographs – one from each shoot – to the Model Release.

9. I can confirm that the Model Release was a standard Corbis release that was pre-printed, prior to signing, with “Rev’d 6-18-07” stamped on the bottom left-hand corner.

I declare that, to the best of my knowledge and belief, the information contained herein is true and correct.

Dated: New York, New York
April 1, 2016

A handwritten signature in black ink, appearing to read "Max Miller", written over a horizontal line.

MAX MILLER

EXHIBIT C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ELODIE PASSELAIGUE, on behalf of herself
and all others similarly situated,

Plaintiff,

v.

GETTY IMAGES (US), INC., GETTY
IMAGES, INC., BILL DIODATO
PHOTOGRAPHY, LLC,
and BILL DIODATO,

Defendants.

Civil Action No. 16-cv-01362
(VSB)(BCM)

**DECLARATION OF
LINDA HILFIKER**

LINDA HILFIKER, being duly sworn, deposes and says:

1. I submit this declaration in connection with the above-captioned action. I have personal knowledge of the following facts and, if called as a witness, I could and would competently testify thereto.
2. I worked with Bill Diodato in the photo industry for many years and am familiar with his practices regarding model releases.
3. I produced the Spiegel catalog shoot on June 11, 2009, and was present in the studio that day.
4. At the time of the Spiegel catalog shoot, I was aware that Mr. Diodato had done a test shoot with the same model, Elodie Passelaigue, for Clinique in 2004. I recall that, when Mr. Diodato learned that the model was coming in for the Spiegel catalog shoot, he decided that he would ask her to sign a release for both the Spiegel catalog shoot and the earlier Clinique shoot.
5. I was a witness to the June 11, 2009 model release at issue in the above-captioned matter (the "Model Release"). Mr. Diodato had asked Ms. Passelaigue to sign the Model

Release at a lunch table in the rented studio. Several other people, including me, sat around the table as the Model Release was signed.

6. Mr. Diodato filled out the "Description of Shoot," which is his general practice, filled in the date and signed his name. He then handed the Model Release to Ms. Passelaigue, who, after reading the Model Release, filled out her part and signed her name before the witnesses signed their own names.

I declare that, to the best of my knowledge and belief, the information contained herein is true and correct.

Dated: New York, New York
March 29, 2016


LINDA HILFIKER

STATE OF New York)
ss.:
COUNTY OF New York

On the 29 day of March, 2016, before me personally appeared Linda Hilfiker, personally known to me or proved to me to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual executed the instrument.


Notary Public

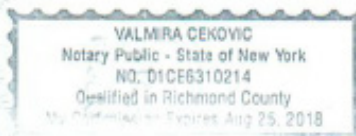


EXHIBIT D

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ELODIE PASSELAIGUE, on behalf of herself
and all others similarly situated,

Plaintiff,

v.

GETTY IMAGES (US), INC., GETTY
IMAGES, INC., BILL DIODATO
PHOTOGRAPHY, LLC,
and BILL DIODATO,

Defendants.

Civil Action No. 16-cv-01362
(VSB)(BCM)

DECLARATION OF
LAUREN BENWARD

LAUREN BENWARD, being duly sworn, deposes and says:

1. I submit this declaration in connection with the above-captioned action. I have personal knowledge of the following facts and, if called as a witness, I could competently testify thereto.
2. I have worked with Bill Diodato on photo shoots in the past as an independent contractor fashion stylist. Mr. Diodato generally oversees the photo shoots to ensure that everything is done properly.
3. I was the fashion stylist for the Spiegel catalog shoot on June 11, 2009. I was present in the studio for the shoot that day. I remember the shoot and the model, Elodie Passelaigue.
4. I recently reviewed a copy of the model release (the "Model Release") and recognized my signature and handwriting on the bottom left corner of the page. I know that I would not have signed the Model Release unless I actually witnessed the model sign it.

Please see attached California Acknowledgment.

**CALIFORNIA ALL-PURPOSE
ACKNOWLEDGMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

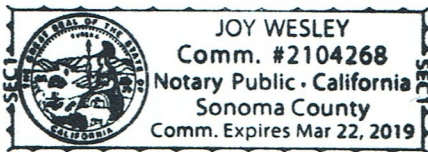
State of California

County of Sonoma

On Thursday, March 31st 2018 before me, Joy Wesley, Notary Public, personally appeared Lauren Bennett Krause, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



(SEAL)

Joy Wesley
Joy Wesley
Notary Public, Sonoma County
Commission #2104268
Expires 03-22-2019

☐ If marked, then attached pages will bear embossment of above notary.

Optional: Not required by law, however, may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

Signature Authority of Signer:

- ☐ Individual(s)
☐ Corporate Officer(s)

- _____
(Title)
☐ Partner (Limited or General)
☐ Attorney In Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other _____

Description of Attached Documents:

Title or type of Document: _____

Number of Pages: _____

Date of Document: _____

Signer(s) other than Named Above:

EXHIBIT E

Microsoft Office Outlook Web Access Type here to search This Folder Address Book Options ? Log Off

Mail Calendar Contacts

Deleted Items (3892) Drafts [1] **Inbox (12)** Junk E-mail Sent Items

Click to view all folders Manage Folders...

Re: **Model release for 103434252**
Elodie PASSELAIGUE [elodiepass@hotmail.com]

You replied on 8/8/2014 7:54 PM.

Sent: Friday, August 08, 2014 7:51 PM
To: Daureen Castonguay

Thank YOU, Daureen!

I am so glad you were able to uncover so much in such a limited timeframe.

Have a blissful weekend Daureen!

Most gratefully,

Elodie

Sent from my iPhone

On Aug 8, 2014, at 7:34 PM, "Daureen Castonguay" <Daureen.Castonguay@wilhelmina.com> wrote:

Hi Elodie

I believe that this person doctored the release and there is no way you could have signed for both photos which were shot years apart, I thought that from the moment I saw the release. whoever this person is they are a liar and cheat in my opinion. Our attorney is away until August 17, I am going to cc her on this email. I am so happy you kept such good records. Let us see what Ali has to say about all of this when she gets back. Thanks very much Elodie...Have a good weekend.

Xo
daureen

From: Elodie PASSELAIGUE [mailto:elodiepass@hotmail.com]
Sent: Friday, August 08, 2014 4:50 PM
To: Daureen Castonguay
Subject: Re: Model release for 103434252

Also, the picture being used by brilliant Distinctions is probably issued from the Spiegel photo shoot - this would explain why I never saw the pics as it was intended either for a catalog or online. The Clinique pictures were very different- as you can tell by the shot that figures on the right hand side of the release and the tear sheets that you have seen of my Clinique work (always straight on, always the same distance from the camera, with different substance, lights, shadings applied to my face).

Sent from my iPhone

On Aug 8, 2014, at 2:03 PM, "Daureen Castonguay" <Daureen.Castonguay@wilhelmina.com> wrote:

Hello Elodie

I reached out to Getty Images and this is the release they sent me for the image that is up on Brilliant Distinctions.. Is that your signature? I am ccing Ali Grace , our attorney here, she and I have spoken about the issue.

Xo
daureen

From: Getty Images Service - N.America [mailto:Service.NA@gettyimages.com]
Sent: Friday, August 08, 2014 1:58 PM
To: Daureen Castonguay
Subject: Model release for 103434252

WIL-0108

Hello Daureen,

My name is Kevin and I am in the service department at Getty Images. I have attached a redacted copy of the requested model release. We do this for all releases as we do not want any personal information of the photographer or client to be available. If you have any questions please let myself or Sarah know and we will be happy to help! Thank you for your time.

Kevin Marren

Kevin.Marren@gettyimages.com

<release.jpg>

 Connected to Microsoft Exchange

WIL-0109

EXHIBIT F

1

2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK

4 -----X

5 ELODIE PASSELAIGUE, on behalf of herself
6 and all others similarly situated,

7 PLAINTIFF,

6

8 -against- Case No:
9 16-cv-01362

10 GETTY IMAGES (US), INC., GETTY IMAGES,
11 INC., BILL DIODATO PHOTOGRAPHY, LLC, and
12 BILL DIODATO,

13 DEFENDANTS.

14 -----X

11

15 DATE: August 13, 2018

16 TIME: 10:30 A.M.

14

15

17 CONFIDENTIAL VIDEOTAPED

18 DEPOSITION of the Plaintiff, ELODIE

19 PASSELAIGUE, taken by the Defendants,

20 pursuant to a Court Order and to the

21 Federal Rules of Civil Procedure, held at

22 the offices of Cowan, DeBaets, Abrahams &

23 Sheppard, LLP, 41 Madison Avenue, New York,

24 New York 10010, before Joshua B.

25 Edwards, RDR, CRR, CLR, a Notary Public of

the State of New York.

1

2 A P P E A R A N C E S:

3

4 THE LAW OFFICE OF JACK FITZGERALD, P.C.
5 Attorneys for the Plaintiff
6 Hillcrest Professional Building
3636 Fourth Avenue, Suite 202
San Diego, California 92103
BY: TREVOR M. FLYNN, ESQ.

7

8

9 COWAN, DEBAETS, ABRAHAMS & SHEPPARD, LLP
10 Attorneys for the Defendants
41 Madison Avenue, Suite 38
New York, New York 10010
11 BY: SCOTT J. SHOLDER, ESQ.
-and-
12 MARISSA LEWIS, ESQ.
File #: 14040-104

13

14

15 ALSO PRESENT:

16

17 ANDREW SACHS, ESQ.
Director, Corporate Counsel
Getty Images

18

19 STEPHEN KENT
Legal Videographer

20

21 Ms. Passelaigue's minor daughter

22

23

24

25

26

1

2 F E D E R A L S T I P U L A T I O N S

3

4 IT IS HEREBY STIPULATED AND AGREED by

5 and between the counsel for the respective

6 parties herein that the sealing, filing and

7 certification of the within deposition be

8 waived; that the original of the deposition

9 may be signed and sworn to by the witness

10 before anyone authorized to administer an

11 oath, with the same effect as if signed

12 before a Judge of the Court; that an

13 unsigned copy of the deposition may be used

14 with the same force and effect as if signed

15 by the witness, 30 days after service of

16 the original & 1 copy of same upon counsel

17 for the witness.

18

19 IT IS FURTHER STIPULATED AND AGREED

20 that all objections except as to form, are

21 reserved to the time of trial.

22

23 * * * *

24

25

1 E. PASSELAIGUE - Confidential

2 to mark as Defense Exhibit 1 for
3 identification.

4 (Defense Exhibit 1, Complaint,
5 marked for identification.)

6 Q. Do you recognize this document?
7 You can flip through it. Take your time.

8 A. (Perusing.) It is one of the
9 many documents that were drafted on my
10 behalf.

11 Q. Did you review it at any point
12 before it was filed?

13 A. Sure I did.

14 Q. And is everything in it
15 accurate, to the best of your knowledge?

16 A. To the best of my knowledge.
17 But I'm just scanning through it right now.
18 So unless I read it all --

19 Q. But to be clear, you still
20 stand behind all of the allegations in the
21 Complaint?

22 A. I still stand behind all of the
23 allegations in the Complaint, yes.

24 Q. I am going to hand you two
25 documents that we will mark for

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2 Q. Are there other agencies that
3 are, for lack of a better term, lower-tier?

4 A. There are, but there are also
5 other high-caliber agencies. There are
6 both.

7 Q. What do you consider the
8 agencies that you have been represented by?
9 What kind of top-tier or --

10 A. Oh, yeah.

11 Q. Yeah?

12 A. Oh, yeah. They are at the top.

13 MR. SHOLDER: I am marking for
14 identification as Defense Exhibit 11
15 a copy of a Model Release.

16 (Defense Exhibit 11, Model
17 Release, was marked for
18 identification as of this date.)

19 Q. Do you recognize this document?

20 A. I do recognize this document,
21 yes.

22 Q. This is a true and correct
23 copy, to the best of your knowledge?

24 A. It's the copy that I was
25 provided -- sorry.

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2 MR. FLYNN: Sorry, I am just
3 going to interpose a late objection.
4 It calls for a legal conclusion. But
5 continue.

6 A. It's the second copy that I
7 was -- that my agent, I believe, obtained
8 from Getty Images.

9 Q. The second copy?

10 A. Yes. The first one was -- had
11 paragraphs that were blanked.

12 Q. This copy of the release came
13 from your agency, to the best of your
14 recollection?

15 A. I forget if it was the first
16 agent that worked on the case or if it was
17 my agency that eventually got it; one of
18 the two. But it was the second release
19 that we obtained. The first one did not
20 make mention of Bill Diodato at all. It
21 was all blanked out on that side. I had
22 other things blanked out, but I forget.

23 MR. SHOLDER: Marking for
24 identification as Defense Exhibit 12
25 another copy of the model release.

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2 (Defense Exhibit 12, Model
3 Release, was marked for
4 identification as of this date.)

5 Q. (Counsel handing.)

6 A. Thank you.

7 Q. You're welcome.

8 Do you recognize this copy of
9 the model release?

10 A. No. I was under the impression
11 it was the other side that was blanked out.
12 I have to look in my archives.

13 Q. Why don't I show you the one
14 that I think you are talking about and we
15 will go from there.

16 A. Oh, yes, that's it.

17 MR. SHOLDER: We will mark this
18 Defense Exhibit 13.

19 (Defense Exhibit 13, Model
20 Release with redactions, was marked
21 for identification as of this date.)

22 Q. Do you recognize this copy?

23 A. Mm-hmm.

24 Q. Is this the copy of the model
25 release that Getty Images provided to you

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2 initially?

3 A. Yes, it is, the copy that left
4 us very puzzled as to who had taken -- who
5 had taken those pictures, who had taken the
6 one picture we could not identify.

7 Q. If you go back to D. 12, the
8 one I just gave you before, do you have any
9 idea where this release came from?

10 A. It has to have come from either
11 a photographer or Getty.

12 Q. Did you have a copy of this
13 release at all --

14 A. No.

15 Q. -- at any time?

16 A. No.

17 Q. Did you check your records?

18 A. Yeah, I did.

19 Q. We can look back at D. 11,
20 which is the unredacted version. That's
21 your signature on the line that says "for
22 model only"?

23 A. Mm-hmm. Looks like my
24 signature, yes.

25 Q. Well, it looks like your

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2 signature and is, I guess, are two
3 different things. So do you believe that
4 this is, in fact, your signature?

5 A. It looks like my signature
6 signed in a hurry, so yes, I believe it
7 would be my signature, but it would have
8 been signed in a very big hurry. If you
9 compare to the contract, the Ford Model
10 contract, my last name is legible.

11 Q. Did you read the release before
12 you signed it?

13 A. I would think I would have if I
14 signed it. I usually read anything that I
15 sign.

16 Q. Do you have a specific
17 recollection of about whether you signed
18 it -- I'm sorry, about whether you read it?

19 A. Do I have a specific
20 recollection? No, I don't have a specific
21 recollection of the date and time when this
22 was actually signed.

23 Q. If you could take a look at
24 Exhibit D. 4, back at the beginning of the
25 file somewhere. You can put that one aside

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2 for now, now that I think of it.

3 Let's talk a bit about the
4 Clinique test shoot. Can you tell me your
5 recollection of that day.

6 A. Yes. I remember the photo
7 studio was Fast Ashleys in Brooklyn. It
8 was -- it never happened for us to shoot in
9 New York. So it was the only shoot that
10 Clinique ever organized. It was not meant
11 to produce an outcome that would use --
12 that would be used for commercial purposes.

13 It was more of a -- it was more
14 of a test, because the concept was
15 difficult to take pictures of. The concept
16 was to have the model immersed in a
17 full-body-sized fish tank. So you needed
18 to have a photo studio that was big enough
19 to accommodate that fish tank, that
20 quantity of water too, because it's very
21 nice but you have to empty that tank.

22 So you needed to have that, see
23 how the light reflects and distorts. As
24 you can see in this the picture, the bottom
25 half, the immersed part is much wider than

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2 the top half. So all of these details are
3 the kind of details we were looking to --
4 to capture prior to actually having the
5 whole team present and on the clock.

6 I mean, it was not my decision,
7 clearly. It was the decision of the art
8 director. But that's what they were
9 looking to test is how feasible that
10 concept was. The photographer for Clinique
11 was not present that day on the shoot,
12 which was unheard of. I don't know why.
13 The makeup artist was not present. The
14 hair stylist was not present.

15 Everybody was based in Paris.
16 So it was a reduced team: The art
17 director, myself, Merrily and clearly Bill
18 Diodato. I don't remember if there was
19 anybody else that was there.

20 Q. Who is Merrily?

21 A. Merrily was in charge of -- I
22 think her title was art buyer, but she was
23 in charge of hiring models.

24 Q. For Clinique?

25 A. For Clinique.

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2 Q. Do you remember if there was
3 anybody else present other than who you've
4 already told me?

5 A. I don't remember anybody else
6 being present. But I know for sure the
7 regular actors of that story, the makeup
8 artist, hair stylist, photographer were not
9 present. The model maker was not present,
10 either.

11 Q. How long did that shoot last?

12 A. I don't know. I want to say a
13 whole day, but it could have been a short
14 day. I'm not sure.

15 Q. So you told me the name of the
16 studio. Do you remember what the studio
17 looked like?

18 A. Well, it's kind of a legendary
19 studio because it used to be a car garage
20 for collectible vehicles. And it was
21 turned into a studio. And at the time it
22 still had some of the vehicles in there.

23 So, yeah, and also I didn't
24 know how to get there because I never
25 traditionally shot in Brooklyn for

1 E. PASSELAIGUE - Confidential

2 anything. Again, they had chosen the
3 studio for specific reasons. Usually we
4 shot in Manhattan.

5 Q. Do you remember anything else
6 about the shoot?

7 A. What do I remember? I didn't
8 have proper hair and makeup. I didn't even
9 remember there was a flower, but clearly in
10 the picture you can see there's a flower.
11 I remember the size of the tank.

12 I remember -- I remember the
13 photographer was an odd person that had
14 never been on the team before whom I now
15 know as Bill Diodato. But that day, it
16 seemed to me like it was the first time I
17 have meeting him. Time will tell that I
18 had worked with him prior, and I didn't
19 remember him. What else? I don't even
20 remember if we had lunch or not. So that's
21 not helping us determine if it was a long
22 day or not.

23 Q. That's okay. Whatever you can
24 remember.

25 A. I remember I was wearing a

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2 bathing suit.

3 Q. I should hope so, in a tank of
4 water.

5 A. I believe that's it.

6 Q. What do you recall about the
7 June 2000 -- the June 11, 2009, Spiegel
8 shoot?

9 A. Spiegel? I forget the name of
10 the studio, but I can visualize it. It's
11 one of those -- it's that one photo studio,
12 it might have been Sun Studios. It's
13 located -- when you are in Midtown around
14 34th Street, you have, you have some kind
15 of, like, highway/tunnel exit or entrance
16 that passes by. It was the top floor, I
17 think. It was waist-down, meaning
18 unrecognizable, meaning my face was not
19 exposed and makeup was not supposed to be
20 applied.

21 It was, I know now, I don't
22 know if I would have recalled that just
23 from seeing the -- from seeing the picture,
24 I couldn't tell where it had been taken
25 from. But I know now the Spiegel shoot was

1 E. PASSELAIGUE - Confidential

2 only a half day. Um, clearly it was Bill
3 shooting it, Diodato.

4 What else do I remember? There
5 was a stylist on this job because clearly
6 when you're doing waist-down, you need to
7 have the pants fit correctly. The emphasis
8 is on that.

9 Q. Do you remember who the stylist
10 was?

11 A. No idea.

12 Q. Was anybody else present aside
13 from the photographer and the stylist?

14 A. It was a big team. I would
15 believe that the client would have been
16 present. I think it was a pretty big team.
17 I don't remember it being a small team, but
18 I don't remember all the details of that
19 shoot anyway.

20 And I don't remember the names
21 of any -- I mean, I have had to think about
22 that shoot because of this case. I don't
23 remember the names of the people that were
24 present. They are not people that I worked
25 with regularly.

1 E. PASSELAIGUE - Confidential

2 Q. Do you recall if there was
3 anybody there, any photo assistant or any
4 lighting technician?

5 A. There probably would have been
6 because on that type of shoot, the
7 photographer is not alone.

8 Q. When, approximately, would it
9 have started in the morning?

10 A. If it's a half day, we would
11 have started anywhere from eight o'clock to
12 nine o'clock in the morning.

13 Q. And when you say "half day,"
14 what does that mean exactly?

15 A. It means they don't need me for
16 the whole day. They only need me until
17 they break for lunch.

18 Q. Which would be about what time?

19 A. 12:00 or 1:00, noon or 1:00.

20 Typically on these shoots when they are
21 half day, one model is in the morning.

22 Another model or two other models are at a
23 different time.

24 Q. Do you recall the circumstances
25 of signing this release?

1 E. PASSELAIGUE - Confidential

2 A. No, I don't.

3 Q. When did you first find out
4 about the Allergan ad?

5 A. The year it ran, which right
6 now I can't even remember if it was 2013,
7 20 -- I have no idea. I think it was
8 around 2013. I can't even tell you the
9 time of the year.

10 What I can tell you is I was
11 working at Bergdorf Goodman and I had both
12 clients and models telling me, yay,
13 congratulations on your Botox ad. And I
14 was like what? Yeah, I saw you on the
15 Botox campaign. That must be great. And I
16 said it must be someone that looks like me
17 because I never worked for Botox before.
18 And I didn't think anything about it until
19 somebody actually handed me a screenshot.

20 And I was, like, yes, that is
21 actually me. You are correct. And then
22 that raised a big question, like, how did
23 that picture get appropriated by Botox,
24 which is what I thought it was at the time?

25 Turns out it is Brilliant

1 E. PASSELAIGUE - Confidential

2 D E C L A R A T I O N

3

4 I hereby certify that having been
5 first duly sworn to testify to the truth, I
6 gave the above testimony.

7

8 I FURTHER CERTIFY that the foregoing
9 transcript is a true and correct transcript
10 of the testimony given by me at the time
11 and place specified hereinbefore.

12

13

14

15

16 _____
ELODIE PASSELAIGUE

17

18 Subscribed and sworn to before me
19 this _____ day of _____ 20____.

20

21 _____
NOTARY PUBLIC

22

23

24

25

1 E. PASSELAIGUE - Confidential

2 E X H I B I T S

3
4 DEFENDANT'S EXHIBITS

5 EXHIBIT	6 EXHIBIT	7 PAGE
8 NUMBER	9 DESCRIPTION	
10 1	11 Complaint	12 11
13 2	14 Document demands	15 12
16 3	17 Answers to Defendants' 18 First Set of 19 Interrogatories	20 18
21 4	22 Answers to Defendants' 23 Request for Admission	24 23
25 5	26 Karin Models Vendor 27 Balance Detail sheet	28 66
29 6	30 Financial Activity from 31 1/1/08 to 12/31/08	32 71
33 7	34 Form 100 from 2013	35 80
36 8	37 Form 1099s for 2014	38 85
39 9	40 Form 1099 for 2015	41 93
42 10	43 Ford Models management 44 contract	45 109
46 11	47 Model Release	48 115
49 12	50 Model Release	51 117
52 13	53 Model Release with 54 redactions	55 117

23 (Exhibits retained by Counsel.)

24

25

1 E. PASSELAIGUE - Confidential

2 I N D E X

3 EXAMINATION BY PAGE

4 MR. SHOLDER 6

5

6

7

8 INFORMATION AND/OR DOCUMENTS REQUESTED

9 INFORMATION AND/OR DOCUMENTS PAGE

10 Call sheets 14

11 Ms. Passelaigue's signature and 22

12 verification

13 E-mail exchanges with Wilhelmina 93

14 Model release 107

15

16

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1 E. PASSELAIGUE - Confidential

2 C E R T I F I C A T E

3

4 STATE OF NEW YORK)
5 : SS.:
6 COUNTY OF NEW YORK)

7

8 I, JOSHUA B. EDWARDS, a Notary Public
9 for and within the State of New York, do
10 hereby certify:

11 That the witness whose examination is
12 hereinbefore set forth was duly sworn and
13 that such examination is a true record of
14 the testimony given by that witness.

15 I further certify that I am not
16 related to any of the parties to this
17 action by blood or by marriage and that I
18 am in no way interested in the outcome of
19 this matter.

20 IN WITNESS WHEREOF, I have hereunto
21 set my hand this 28th day of August 2018.

22

23

24

25


JOSHUA B. EDWARDS, RDR, CRR